



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10  
1200 Sixth Avenue  
Seattle, WA 98101

NOV 29 2002

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Reply To  
Attn Of: ECO-083

Robert E. Kerivan, President  
Bridgeview Vineyards, Inc.  
4210 Holland Loop Road  
PO Box 609  
Cave Junction, OR 97523

Howard Reuben Pickle  
4250 Holland Loop Road  
PO Box 622  
Selma, OR 97538

Re: In the matter of: Robert Edward Kerivan, Howard Reuben Pickle, and Bridgeview Vineyards, Inc., Docket No. CWA-10-2003-0044-12

Dear Mr. Kerivan and Mr. Pickle:

Enclosed is an administrative compliance order ("Compliance Order") issued to you individually and to Bridgeview Vineyards, Inc. pursuant to Sections 308 and 309(a) of the Clean Water Act, 33 U.S.C. §§ 1318 and 1319(a). The Compliance Order requires you and Bridgeview Vineyards, Inc. to perform certain work and to provide certain information as a result of CWA violations at Bridgeview Vineyards & Winery, 4210 Holland Loop Road, Cave Junction, OR.

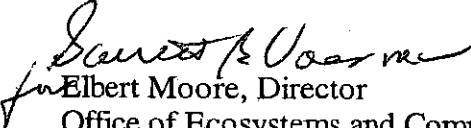
Please be aware that failure to comply with the order may subject you and Bridgeview Vineyards, Inc. to civil penalties of up to \$27,500 per day of violation, administrative penalties of up to \$11,000 per day for each violation up to a maximum amount of \$137,500, or civil action in federal court for injunctive relief, pursuant to Section 309 of the Act, 33 U.S.C. § 1319.

Please also note that your compliance with the enclosed order would not preclude EPA from bringing a formal enforcement action for penalties or further injunctive relief to address the Clean Water Act violations that have already been committed at Bridgeview Vineyards & Winery.

Please read this compliance order carefully, and contact Yvonne Vallette at (503) 326-2716, if you have any technical questions concerning this order. If you have any legal questions concerning this order, then please have your attorney contact Deborah Hilsman, Assistant Regional Counsel, at (206) 553-1810.

Thank you for your prompt attention to this matter.

Sincerely,

  
Elbert Moore, Director  
Office of Ecosystems and Communities

Enclosure

cc: Clarence Greenwood, Esq.  
Robert Rose, U.S. Army Corps of Engineers, Portland District  
Steve Morrow, Oregon Division of State Lands

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10  
1200 Sixth Avenue  
Seattle, Washington 98101

In the matter of:

Robert Edward Kerivan,  
Howard Reuben Pickle, and  
Bridgeview Vineyards, Inc.,

Respondents.

Docket No. CWA-10-2003-00<sup>12</sup>~~1~~  
COMPLIANCE ORDER

The following FINDINGS AND CONCLUSIONS are made and ORDER issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Sections 308 and 309 of the Clean Water Act ("Act"), 33 U.S.C. §§ 1318 and 1319. This authority has been delegated to the Regional Administrator, Region 10, and has been duly redelegated to the undersigned Director of the Office of Ecosystems and Communities.

**I. FINDINGS AND CONCLUSIONS**

1.1. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into waters of the United States by any person, except as authorized by a permit issued pursuant to Section 402 or 404 of the Act, 33 U.S.C. § 1342 or 1344. Each discharge of pollutants from a point source that is not authorized by such a permit constitutes a violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

1.2. Respondent Bridgeview Vineyards, Inc. is a corporation duly organized under the laws of the State of Oregon. Respondent Robert Edward Kerivan is the President of Bridgeview

COMPLIANCE ORDER - 1 <sup>12</sup>  
Docket No. CWA-10-2003-00~~1~~

U.S. ENVIRONMENTAL PROTECTION  
AGENCY  
1200 Sixth Avenue  
Seattle, Washington 98101  
(206) 553-1810

1 Vineyards, Inc. and an owner and operator of the Bridgeview Vineyards & Winery. Respondent  
2 Howard Reuben Pickle, is a Bridgeview Vineyards, Inc. employee. Bridgeview Vineyards, Inc.,  
3 Robert Edward Kerivan, and Howard Reuben Pickle are hereinafter collectively referred to as  
4 "Respondents."

5 1.3. Each of Respondents is a "person" within the meaning of Section 502(5) of the Act,  
6 33 U.S.C. § 1362(5).

7 1.4. Bridgeview Vineyards & Winery is located at 4210 Holland Loop Road, Cave  
8 Junction, Josephine County, in southwestern Oregon ("the Bridgeview property").

9 1.5. The northern boundary of the Bridgeview property is adjacent to the lower end of  
10 Sucker Creek ("the Site").

11 1.6. Sucker Creek is a tributary to the East Fork of the Illinois River.

12 1.7. On or about November 13, 2002, at times more fully known to Respondents,  
13 Respondents directed or conducted dredge and fill activities at the Site within the natural channel,  
14 adjacent wetlands, and floodplain below the ordinary high water level of Sucker Creek.

15 1.8. A witness reports observing Respondent Howard Pickle on November 13, 2002, using  
16 heavy equipment to move native materials within the creek and on adjacent wetlands and floodplain  
17 to create a 300-foot gravel berm in Sucker Creek, its adjacent wetlands and floodplain.

18 1.9. The berm created by Respondent Pickle blocks Sucker Creek's flow into the natural  
19 channel on the south side and diverts the flow into to a new channel on the north side of the creek  
20 that was excavated through a former gravel bar by Respondent Pickle. The berm impedes natural  
21 stream processes such as overbank flooding and the free flow of the creek into its adjacent wetlands  
22 and floodplain.

23 1.10. Sucker Creek is used by Southern Oregon/Northern California coho salmon for  
24 spawning and was designated by the National Marine Fisheries Service as critical habitat for this  
25 species on May 5, 1999.

1 1.11. On November 19, 2002, inspectors from the National Oceanic and Atmospheric  
2 Administration (NOAA) Fisheries Service visited the Site and observed that the work in the creek  
3 had adversely impacted the habitat of the coho salmon, most of which enter rivers in October and  
4 spawn from November to December and occasionally into January.

5 1.12. On November 25, 2002, EPA and NOAA Fisheries Service inspectors observed that  
6 large boulders had been placed along the lower end of the berm providing additional reinforcement  
7 to the berm. The inspectors also observed that two 18" culverts were placed under the berm,  
8 providing a minimal hydrologic connection between the old channel and the new channel.

9 1.13. The constructed berm creates an obstacle for migrating adult coho salmon that are  
10 currently moving through the stream system to spawn. Spawned-out adult coho salmon were  
11 observed immediately downstream of the convergence of the blocked channel and the created  
12 channel.

13 1.14. The removal and subsequent replacement of stream gravel materials and large  
14 boulders by heavy equipment to create the channel-blocking berm and form a new channel were  
15 done in a manner that caused both turbidity-laden return waters and fine sediments/gravels to be  
16 reintroduced into the stream. This may have resulted in smothering some existing coho salmon  
17 redds (nests) located downstream.

18 1.15. Sucker Creek is a "navigable water" and a "waters of the United States" within the  
19 meaning of Section 502(7) of the Act, 33 C.F.R. § 328.3(a), and 40 C.F.R. § 232.2.

20 1.16. The Site contains areas which meet the definition of a "special aquatic site" under 40  
21 C.F.R. § 230.3(q-l) of EPA's 404(b)(1) Guidelines for Specification of Disposal Sites of Dredged or  
22 Fill Material. The "special aquatic site" areas on the Site in which Respondents placed fill  
23 materials include, but are not limited to:

- 24 i. Riffle and pool complexes of Sucker Creek located below the ordinary high water  
25 level; and  
26 ii. Vegetated wetlands adjacent to and within the floodplain of Sucker Creek.

1.17. The streambed material and other materials referenced in the preceding paragraphs constitute both "fill material" within the meaning of Section 404 of the Act, 33 U.S.C. § 1344, and 40 C.F.R. § 232.2, and "pollutant[s]" within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6), and 40 C.F.R. § 232.2.

1.18. The heavy equipment referenced in paragraphs 1.8 and 1.14 above are "point source[s]" within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).

1.19. By causing such fill material to enter waters of the United States, Respondents have engaged in the "discharge of a pollutant" from a point source within the meaning of Sections 301 and 502(12) of the Act, 33 U.S.C. §§ 1311 and 1362(12).

1.20. None of Respondents' discharges of pollutants at the Site were authorized by any current permit issued pursuant to Section 402 or 404 of the Act, 33 U.S.C. § 1342 or 1344.

1.21. Respondents' discharge of pollutants into waters of the United States at the Site without a permit constitute a violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

1.22. As of the effective date of this Order, the fill materials discharged by Respondents remain in place.

## II. ORDER

Based upon the foregoing FINDINGS AND CONCLUSIONS, and pursuant to Sections 308 and 309(a) of the Clean Water Act, 33 U.S.C. §§ 1318 and 1319(a), it is hereby ORDERED as follows:

2.1. Upon receipt of this Order, Respondents shall immediately cease all unauthorized discharges of dredged material, fill material, and other pollutants to:

- i. Sucker Creek;
- ii. the vegetated and unvegetated areas of the Site below the ordinary high water level; and
- iii. any other waters of the United States at the Site, including adjacent wetlands.

1           2.2. Respondent shall immediately implement interim removal actions to address the  
2 adverse effects of the discharges of fill material within Sucker Creek as described below:

3           i. To ensure a natural hydrologic reconnection of the historic southeastern channel of Sucker  
4 Creek, Respondents shall remove all of the fill material used to create the berm that is now  
5 blocking the approximately 25-foot-wide opening of the natural channel of Sucker Creek. To  
6 minimize impacts to coho salmon that might be using the area, all removal activities shall be  
7 conducted from the access road which provides access to Sucker Creek and shall not be  
8 conducted within the creek or on those areas of its banks that are wet.

9           ii. Respondents shall also remove the two culverts installed within the channel-blocking  
10 berm.

11           iii. All fill material removed shall be placed on upland areas that are away from either the  
12 floodplain or wetland areas adjacent to Sucker Creek.

13           iv. At least forty-eight (48) hours prior to commencing any of the interim removal actions  
14 described in subparagraphs i, ii, and iii above, Respondents shall provide verbal notification  
15 to the person identified in the paragraph below to arrange for an on-site monitor designated  
16 by EPA to insure that the interim removal actions are carried out in conformance with this  
17 Compliance Order.

18           2.3. The interim removal actions referenced above shall be completed within thirty (30) days  
19 of receipt of this Order. In the alternative, should this timeframe be technically or logistically  
20 infeasible, Respondents shall prepare a schedule for compliance and submit it for approval within  
21 thirty (30) days of receipt of this Order to:

22                           Yvonne Vallette  
23                           U.S. Environmental Protection Agency  
24                           Oregon Operations Office  
25                           811 SW 6<sup>th</sup> Avenue, 3<sup>rd</sup> Floor  
26                           Portland, Oregon 97204  
27                           Tel: (503) 326-2716  
28                           Fax: (503) 326-3399

2.4. Respondents shall provide a report to Ms. Vallette at the above address within five (5) days of final completion of the interim removal actions required in paragraph 2.2 of this Order. The report shall include a written and photographic record confirming that the interim removal actions have been completed.

2.5. Within sixty (60) days of the effective date of this Order, Respondents shall submit to EPA for review and approval a proposed Restoration/Mitigation Work Plan ("Work Plan"). The proposed Work Plan shall describe the measures proposed to remove any fill left in place subsequent to the interim removal of the portion of the berm that is blocking the channel. The Work Plan shall also describe measures to mitigate impacts to riparian vegetation as a result of the unauthorized activities. The Work Plan shall contain a schedule that includes initiation and completion of all work required. Upon receipt of the proposed Work Plan, EPA shall obtain comments from all state and federal agencies that have jurisdiction at the Site before it approves a final Work Plan.

2.6. EPA encourages Respondents to engage in informal discussion of the terms and requirements of this Order with EPA upon receipt of this Order. Such discussions should address any allegations herein which Respondents believe to be inaccurate or requirements which may not be attainable and the reasons therefor. Alternative methods to attain the objectives of this Order may be proposed. If acceptable to EPA, such proposals may be incorporated into amendments to this Order, at the discretion of EPA.

2.7. Respondents shall provide EPA and/or its designated representatives with access to the Site or obtain access for such persons to the Site and any off-Site areas to which access is needed to determine compliance with this Order. These individuals shall be permitted to move freely at the Site and appropriate off-Site areas in order to conduct actions which EPA determines to be necessary.

### III. SANCTIONS

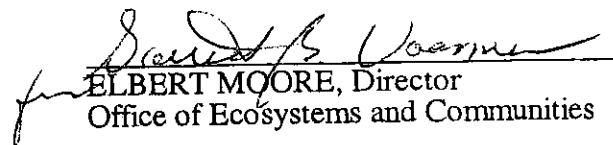
3.1. Notice is hereby given that violation of, or failure to comply with, the foregoing Order may subject Respondents to: (1) civil penalties of up to \$27,500 per day of violation pursuant to



1 Section 309(d) of the Act, 33 U.S.C. § 1319(d), and 40 C.F.R. Part 19; (2) administrative penalties of  
2 up to \$11,000 per day for each violation, pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g),  
3 and 40 C.F.R. Part 19; or (3) civil action in federal court for injunctive relief, pursuant to  
4 Section 309(b) of the Act, 33 U.S.C. § 1319(b).

5 3.2. Nothing in this Order shall be construed to relieve Respondents of any applicable  
6 requirements of federal, state, or local law. EPA reserves the right to take enforcement action as  
7 authorized by law for any violation of this Order and for any future or past violation of any permit  
8 issued pursuant to the Act or of any other applicable legal requirements, including, but not limited  
9 to, the violations identified in Part I of this Order.

10  
11 Dated this 29<sup>th</sup> day of November, 2002

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14 ELBERT MOORE, Director  
15 Office of Ecosystems and Communities  
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10  
1200 Sixth Avenue  
Seattle, WA 98101

June 24, 2004

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Reply To  
Attn Of: ECO-083

Robert E. Kerivan, President  
Bridgeview Vineyards, Inc.  
4210 Holland Loop Road  
PO Box 609  
Cave Junction, OR 97523

Howard Reuben Pickle  
4250 Holland Loop Road  
PO Box 622  
Selma, OR 97538

Re: Amendment to Administrative Compliance Order  
Docket No. CWA-10-2003-0012

Dear Mr. Kerivan and Mr. Pickle:

This letter addresses implementation of the Administrative Compliance Order issued to you and Bridgeview Vineyards, Inc., on November 29, 2002, for unauthorized discharges at the Bridgeview Vineyards & Winery, 4210 Holland Loop Road, Cave Junction, OR. A copy of the Administrative Compliance Order is enclosed. Based upon correspondence with Robert Kerivan and his attorneys and further inspections of the Site, the U.S. Environmental Protection Agency Region 10 ("EPA") hereby amends the November 29, 2002 Administrative Compliance Order ("Order") as set forth below:

AMENDMENT TO ORDER

1) The caption and Paragraph 1 of the Order are amended to delete the reference to Howard Reuben Pickle as a respondent, based upon EPA's understanding that Mr. Pickle is an employee of Bridgeview Vineyards, Inc., who was acting within the scope of his employment at the direction of Robert E. Kerivan, President of Bridgeview Vineyards Inc., at the time of the unauthorized discharges. Hereafter, the term "Respondents" refers to Robert E. Kerivan and Bridgeview Vineyards, Inc., only.

2) Paragraphs 2.2 and 2.3 of the Order are revised as follows:

2.2. To implement removal actions to reverse the adverse effects of the discharges of fill material within Sucker Creek as described below:

- i. To encourage a natural hydrologic reconnection to Sucker Creek, Respondents shall remove all of the remaining channel blocking fill material (i.e., riprap rocks) that are larger than three (3) feet in diameter that were placed within the approximately 25 foot wide opening of the 2002 active channel of Sucker Creek. Any pieces of riprap larger than three (3) feet in diameter and less than 50% imbedded (i.e., only half of the rock surface is exposed above the gravel surface) within the creek channel shall be removed. However, to minimize impacts to coho salmon that might be utilizing the area, all removal activities shall be conducted from the access road or the downstream side of the fill material when and where there are dry conditions. All removal work shall be done only during low flow periods on Sucker Creek between June 25 and September 15, 2004.
- ii. All riprap/fill material that is removed shall be placed on upland areas that are away from either the active floodplain or wetland areas adjacent to Sucker Creek.
- iii. At least seventy-two (72) hours prior to commencing any activity on the Site that will result in the movement of fill material, Respondent shall provide verbal notification to the following person identified in the paragraph below, to verify that the proposed activities are in compliance with other environmental requirements such as state water quality standards, the Endangered Species Act, among others, and to arrange if necessary, for an on-site monitor designated by EPA to insure that these removal measures are carried out in conformance with this Compliance Order.

2.3. These removal measures shall be completed no later than September 15, 2004. Should this timeframe be technically or logistically infeasible, Respondents shall prepare a schedule for compliance and submit it for approval to :

Yvonne Vallette  
U.S. Environmental Protection Agency  
Oregon Operations Office  
811 SW 6<sup>th</sup> Avenue, 3<sup>rd</sup> Floor  
Portland, Oregon 97204  
Tel: (503) 326-2716  
Fax: (503) 326-3399

3) Pursuant to revisions to 40 C.F.R. Part 19 effective March 15, 2004, (see 69 Fed. Reg. 7121, February 13, 2004), Paragraph 3.1. of the Order is revised as follows:

3.1. Notice is hereby given that violation of, or failure to comply with, the foregoing Order may subject Respondents to: (1) civil penalties of up to \$32,500 per day of violation pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d), and 40 C.F.R. Part 19; (2) administrative penalties of up to \$11,000 per day for each violation, pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), and 40 C.F.R. Part 19; or (3) civil action in

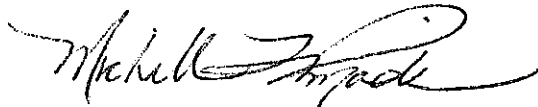
federal court for injunctive relief, pursuant to Section 309(b) of the Act,  
33 U.S.C. § 1319(b).

All other provisions of the Order remain in effect and are applicable.

Please carefully read the Order as amended above, and contact Yvonne Vallette, if you have any technical questions concerning the Order. If you have any legal questions concerning the Order, then please have your attorney contact Deborah Hilsman, Assistant Regional Counsel, at (206) 553-1810.

Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Michelle Pirzadeh", written in a cursive style.

Michelle Pirzadeh, Director  
Office of Ecosystems and Communities

Enclosure

cc: Clarence Greenwood, Esq.  
Robert Rose, U.S. Army Corps of Engineers, Portland District  
Steve Morrow, Oregon Division of State Lands



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10  
1200 Sixth Avenue  
Seattle, WA 98101

NOV 29 2002

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Reply To  
Attn Of: ECO-083

Robert B. Kerivan, President  
Bridgeview Vineyards, Inc.  
4210 Holland Loop Road  
PO Box 609  
Cave Junction, OR 97523

Howard Reuben Pickle  
4250 Holland Loop Road  
PO Box 622  
Selma, OR 97538

Re: In the matter of: Robert Edward Kerivan, Howard Reuben Pickle, and Bridgeview Vineyards, Inc., Docket No. CWA-10-2003-0011-12

Dear Mr. Kerivan and Mr. Pickle:

Enclosed is an administrative compliance order ("Compliance Order") issued to you individually and to Bridgeview Vineyards, Inc. pursuant to Sections 308 and 309(a) of the Clean Water Act, 33 U.S.C. §§ 1318 and 1319(a). The Compliance Order requires you and Bridgeview Vineyards, Inc. to perform certain work and to provide certain information as a result of CWA violations at Bridgeview Vineyards & Winery, 4210 Holland Loop Road, Cave Junction, OR.

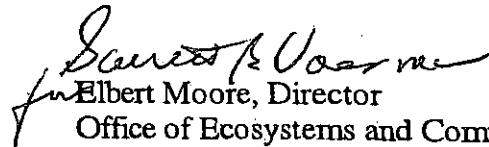
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Please also note that your compliance with the enclosed order would not preclude EPA from bringing a formal enforcement action for penalties or further injunctive relief to address the Clean Water Act violations that have already been committed at Bridgeview Vineyards & Winery.

Please read this compliance order carefully, and contact Yvonne Vallette at (503) 326-2716, if you have any technical questions concerning this order. If you have any legal questions concerning this order, then please have your attorney contact Deborah Hilsman, Assistant Regional Counsel, at (206) 553-1810.

Thank you for your prompt attention to this matter.

Sincerely,

  
Elbert Moore, Director  
Office of Ecosystems and Communities

Enclosure

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Steve Morrow, Oregon Division of State Lands

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6 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
7 REGION 10  
8 1200 Sixth Avenue  
9 Seattle, Washington 98101

10 In the matter of:

11 Robert Edward Kerivan,  
12 Howard Reuben Pickle, and  
13 Bridgeview Vineyards, Inc.,

14 Respondents.

15 Docket No. CWA-10-2003-0011<sup>12</sup>  
16 COMPLIANCE ORDER

17 The following FINDINGS AND CONCLUSIONS are made and ORDER issued pursuant to  
18 the authority vested in the Administrator of the United States Environmental Protection Agency  
19 ("EPA") by Sections 308 and 309 of the Clean Water Act ("Act"), 33 U.S.C. §§ 1318 and 1319.  
20 This authority has been delegated to the Regional Administrator, Region 10, and has been duly  
21 redelegated to the undersigned Director of the Office of Ecosystems and Communities.

22 **I. FINDINGS AND CONCLUSIONS**

23 1.1. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants  
24 into waters of the United States by any person, except as authorized by a permit issued pursuant to  
25 Section 402 or 404 of the Act, 33 U.S.C. § 1342 or 1344. Each discharge of pollutants from a point  
26 source that is not authorized by such a permit constitutes a violation of Section 301(a) of the Act, 33  
27 U.S.C. § 1311(a).

28 1.2. Respondent Bridgeview Vineyards, Inc. is a corporation duly organized under the  
laws of the State of Oregon. Respondent Robert Edward Kerivan is the President of Bridgeview

COMPLIANCE ORDER - 1 12  
Docket No. CWA-10-2003-0011

U.S. ENVIRONMENTAL PROTECTION  
AGENCY  
1200 Sixth Avenue  
Seattle, Washington 98101  
(206) 553-1810

1 Vineyards, Inc. and an owner and operator of the Bridgeview Vineyards & Winery. Respondent  
2 Howard Reuben Pickle, is a Bridgeview Vineyards, Inc. employee. Bridgeview Vineyards, Inc.,  
3 Robert Edward Kerivan, and Howard Reuben Pickle are hereinafter collectively referred to as  
4 "Respondents."

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22 and floodplain.

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1.11. On November 19, 2002, inspectors from the National Oceanic and Atmospheric Administration (NOAA) Fisheries Service visited the Site and observed that the work in the creek had adversely impacted the habitat of the coho salmon, most of which enter rivers in October and spawn from November to December and occasionally into January.

1.12. On November 25, 2002, EPA and NOAA Fisheries Service inspectors observed that large boulders had been placed along the lower end of the berm providing additional reinforcement to the berm. The inspectors also observed that two 18" culverts were placed under the berm, providing a minimal hydrologic connection between the old channel and the new channel.

1.13. The constructed berm creates an obstacle for migrating adult coho salmon that are currently moving through the stream system to spawn. Spawned-out adult coho salmon were observed immediately downstream of the convergence of the blocked channel and the created channel.

1.14. The removal and subsequent replacement of stream gravel materials and large boulders by heavy equipment to create the channel-blocking berm and form a new channel were done in a manner that caused both turbidity-laden return waters and fine sediments/gravels to be reintroduced into the stream. This may have resulted in smothering some existing coho salmon redds (nests) located downstream.

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1.16. The Site contains areas which meet the definition of a "special aquatic site" under 40 C.F.R. § 230.3(q-l) of EPA's 404(b)(1) Guidelines for Specification of Disposal Sites of Dredged or Fill Material. The "special aquatic site" areas on the Site in which Respondents placed fill materials include, but are not limited to:

- i. Riffle and pool complexes of Sucker Creek located below the ordinary high water level; and
- ii. Vegetated wetlands adjacent to and within the floodplain of Sucker Creek.

1.17. The streambed material and other materials referenced in the preceding paragraphs constitute both "fill material" within the meaning of Section 404 of the Act, 33 U.S.C. § 1344, and 40 C.F.R. § 232.2, and "pollutant[s]" within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6), and 40 C.F.R. § 232.2.

1.18. The heavy equipment referenced in paragraphs 1.8 and 1.14 above are "point source[s]" within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).

1.19. By causing such fill material to enter waters of the United States, Respondents have engaged in the "discharge of a pollutant" from a point source within the meaning of Sections 301 and 502(12) of the Act, 33 U.S.C. §§ 1311 and 1362(12).

1.20. None of Respondents' discharges of pollutants at the Site were authorized by any current permit issued pursuant to Section 402 or 404 of the Act, 33 U.S.C. § 1342 or 1344.

1.21. Respondents' discharge of pollutants into waters of the United States at the Site without a permit constitute a violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

1.22. As of the effective date of this Order, the fill materials discharged by Respondents remain in place.

## II. ORDER

Based upon the foregoing FINDINGS AND CONCLUSIONS, and pursuant to Sections 308 and 309(a) of the Clean Water Act, 33 U.S.C. §§ 1318 and 1319(a), it is hereby ORDERED as follows:

2.1. Upon receipt of this Order, Respondents shall immediately cease all unauthorized discharges of dredged material, fill material, and other pollutants to:

- i. Sucker Creek;
- ii. the vegetated and unvegetated areas of the Site below the ordinary high water level; and
- iii. any other waters of the United States at the Site, including adjacent wetlands.

1 2.2. Respondent shall immediately implement interim removal actions to address the  
2 adverse effects of the discharges of fill material within Sucker Creek as described below:

3 i. To ensure a natural hydrologic reconnection of the historic southeastern channel of Sucker  
4 Creek, Respondents shall remove all of the fill material used to create the berm that is now  
5 blocking the approximately 25-foot-wide opening of the natural channel of Sucker Creek. To  
6 minimize impacts to coho salmon that might be using the area, all removal activities shall be  
7 conducted from the access road which provides access to Sucker Creek and shall not be  
8 conducted within the creek or on those areas of its banks that are wet.

9 ii. Respondents shall also remove the two culverts installed within the channel-blocking  
10 berm.

11 iii. All fill material removed shall be placed on upland areas that are away from either the  
12 floodplain or wetland areas adjacent to Sucker Creek.

13 iv. At least forty-eight (48) hours prior to commencing any of the interim removal actions  
14 described in subparagraphs i, ii, and iii above, Respondents shall provide verbal notification  
15 to the person identified in the paragraph below to arrange for an on-site monitor designated  
16 by EPA to insure that the interim removal actions are carried out in conformance with this  
17 Compliance Order.

18 2.3. The interim removal actions referenced above shall be completed within thirty (30) days  
19 of receipt of this Order. In the alternative, should this timeframe be technically or logistically  
20 infeasible, Respondents shall prepare a schedule for compliance and submit it for approval within  
21 thirty (30) days of receipt of this Order to:

22 Yvonne Vallette  
23 U.S. Environmental Protection Agency  
24 Oregon Operations Office  
25 811 SW 6<sup>th</sup> Avenue, 3<sup>rd</sup> Floor  
26 Portland, Oregon 97204  
27 Tel: (503) 326-2716  
28 Fax: (503) 326-3399

2.4. Respondents shall provide a report to Ms. Vallette at the above address within five (5) days of final completion of the interim removal actions required in paragraph 2.2 of this Order. The report shall include a written and photographic record confirming that the interim removal actions have been completed.

2.5. Within sixty (60) days of the effective date of this Order, Respondents shall submit to EPA for review and approval a proposed Restoration/Mitigation Work Plan ("Work Plan"). The proposed Work Plan shall describe the measures proposed to remove any fill left in place subsequent to the interim removal of the portion of the berm that is blocking the channel. The Work Plan shall also describe measures to mitigate impacts to riparian vegetation as a result of the unauthorized activities. The Work Plan shall contain a schedule that includes initiation and completion of all work required. Upon receipt of the proposed Work Plan, EPA shall obtain comments from all state and federal agencies that have jurisdiction at the Site before it approves a final Work Plan.

2.6. EPA encourages Respondents to engage in informal discussion of the terms and requirements of this Order with EPA upon receipt of this Order. Such discussions should address any allegations herein which Respondents believe to be inaccurate or requirements which may not be attainable and the reasons therefor. Alternative methods to attain the objectives of this Order may be proposed. If acceptable to EPA, such proposals may be incorporated into amendments to this Order, at the discretion of EPA.

2.7. Respondents shall provide EPA and/or its designated representatives with access to the Site or obtain access for such persons to the Site and any off-Site areas to which access is needed to determine compliance with this Order. These individuals shall be permitted to move freely at the Site and appropriate off-Site areas in order to conduct actions which EPA determines to be necessary.

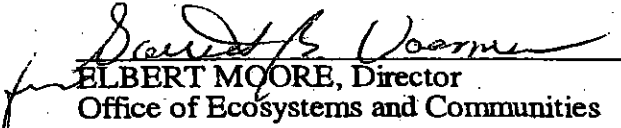
### III. SANCTIONS

3.1. Notice is hereby given that violation of, or failure to comply with, the foregoing Order may subject Respondents to: (1) civil penalties of up to \$27,500 per day of violation pursuant to

1 Section 309(d) of the Act, 33 U.S.C. § 1319(d), and 40 C.F.R. Part 19; (2) administrative penalties of  
2 up to \$11,000 per day for each violation, pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g),  
3 and 40 C.F.R. Part 19; or (3) civil action in federal court for injunctive relief, pursuant to  
4 Section 309(b) of the Act, 33 U.S.C. § 1319(b).

5 3.2. Nothing in this Order shall be construed to relieve Respondents of any applicable  
6 requirements of federal, state, or local law. EPA reserves the right to take enforcement action as  
7 authorized by law for any violation of this Order and for any future or past violation of any permit  
8 issued pursuant to the Act or of any other applicable legal requirements, including, but not limited  
9 to, the violations identified in Part I of this Order.

10  
11 Dated this 21<sup>st</sup> day of November, 2002

12  
13   
14 ELBERT MOORE, Director  
Office of Ecosystems and Communities